

STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. MARION MOORE
Judge, 36th District Court
Detroit, MI 48226

FORMAL COMPLAINT NO. 76

COMPLAINT

The Michigan Judicial Tenure Commission (“Commission”) files this complaint against Hon. Marion Moore, 36th District Court Judge, serving the City of Detroit, Wayne County, Michigan. This action is taken pursuant to the authority of the Commission under Article 6, Section 30 of the Michigan Constitution of 1963, as amended and MCR 9.200 *et seq.* The filing of this Complaint has been authorized and directed by resolution of the Commission.

Respondent is, and at all material times was, a judge of the 36th District Court in Detroit, Michigan. As a judge, she is subject to all the duties and responsibilities imposed on her by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205. Respondent is charged with violating her judicial and professional duties as set forth in the following paragraphs.

1. Respondent at all relevant times has been a judge of the 36th District Court, City of Detroit, Wayne County, Michigan.

2. Respondent was the 36th District Court judge assigned to *People v Senszyszyn*, 36th District Court Case No. U-938769 (“*Senszyszyn*”), which involves a claim that the defendant improperly operated his taxi cab with a passenger in the front seat, and the rear seat unoccupied.

COUNT I

UNECESSARY ADJOURNMENTS

3. As the judge presiding over the case, Respondent adjourned it numerous times, including some occasions without conducting any court proceeding and others where only some nominal event occurred.

4. Respondent conducted the arraignment on November 4, 2002, and scheduled a final settlement conference for January 21, 2003.

5. On January 21, 2003, the defendant appeared for the final settlement conference. For some unknown reason, Respondent adjourned the conference to January 30.

6. Respondent again adjourned the proceedings scheduled for January 30, 2003, which were also described as a “final settlement conference,” without an explanation noted in the file. It appears the new scheduled date was March 19, 2003.

7. On March 7, 2003, Respondent adjourned the “final settlement conference” scheduled for March 19 to May 21, 2003, with the only explanation being a note written in the court file stating “judge not available.”

8. On May 21, 2003, the “final settlement conference” was held, but Respondent once again adjourned the case, and a special hearing date was scheduled for July 24, 2003, to allow the parties to insure that the exhibits for trial were properly marked.

9. Respondent failed to state why a special hearing was needed for the parties to undertake the menial task of marking exhibits for the simple trial.

10. On July 24, eight months after the arraignment, all pretrial matters were resolved and Respondent scheduled a jury trial for September 9, 2003.

11. Respondent should have resolved the preliminary proceedings within several months from the arraignment.

12. On September 9, 2003, the proceedings were adjourned based on Respondent's order for the defendant to undergo a competency evaluation.

13. As revealed by a notation in the court file, the results of the competency evaluation were received on October 27, 2003.

14. On November 10, 2003, Respondent adjourned the competency hearing because her "docket [was] to (*sic*) heavy," as reflected by a note in the court file.

15. As of that hearing date, over a year had passed since the defendant had been arraigned.

16. On November 17, 2003, Respondent acknowledged at a hearing that the defendant was found competent to stand trial. She further noted that he requested a jury trial, and that one would be scheduled.

17. Respondent's staff scheduled a jury trial for February 16, 2004, almost three months from the hearing date and in spite of the fact that over 15 months had passed since the arraignment.

18. Respondent failed to make conducting the jury trial a priority for the aging case.

19. On November 18, 2003, Respondent's staff adjourned the trial date an additional three weeks to March 9, 2004, as February 16 was a court holiday.

20. Respondent was on vacation during the month of March 2004, and the trial was adjourned in Respondent's absence by Hon. Nancy A. Farmer until April 12, 2003.

21. On April 12, 2004, Respondent adjourned the trial date until May 18, without explanation.

22. Respondent recused herself from the case in May 2004 upon notice of the Judicial Tenure Commission's investigation, at which time 18 months had passed after the arraignment, and a trial had not occurred.

23. Not considering the extended preliminary proceedings and the time it took for the defendant to undergo the competency examination, the unnecessary delay after the case was ready for trial was at least seven months.

24. The conduct described in Paragraphs 3 through 23, if true, constitutes:

- (a) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205;
- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1;
- (d) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 2A;
- (e) Conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;
- (f) Failure to respect and observe the law and to conduct oneself at all times in a manner which would enhance the public's confidence in the

integrity and impartiality of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;

- (g) Failure to be faithful to the law and maintain professional competence in it, contrary to the Code of Judicial Conduct, Canon 3A(1);
- (h) Failure to dispose promptly of the business of the court, contrary to the Code of Judicial Conduct, Canon 3A(5);
- (i) Non-adherence to the usual and accepted methods of doing justice, in violation of the Code of Judicial Conduct, Canon 3A(9);
- (j) Conduct which is prejudicial to the proper administration of justice, in violation of MCR 9.104(1);
- (k) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2);
- (l) Conduct which is contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(3); and
- (m) Conduct which is contrary to Respondent's personal responsibility for the proper administration of the court in which she presides, in violation of MCR 9.205(A).

COUNT II

AVOIDING JURY TRIALS

25. According to 36th District Court records, Respondent conducted only one jury trial from January 2002 through May 2004.

26. Respondent adjourns matters before her such that the matters are inordinately delayed.

27. The conduct described in Paragraphs 25 and 26, if true, constitutes:

- (a) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205;
- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1;
- (d) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 2A;

- (e) Conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;
- (f) Failure to respect and observe the law and to conduct oneself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;
- (g) Failure to be faithful to the law and maintain professional competence in it, contrary to the Code of Judicial Conduct, Canon 3A(1);
- (h) Failure to dispose promptly of the business of the court, contrary to the Code of Judicial Conduct, Canon 3A(5);
- (i) Non-adherence to the usual and accepted methods of doing justice, in violation of the Code of Judicial Conduct, Canon 3A(9);
- (j) Conduct which is prejudicial to the proper administration of justice, in violation of MCR 9.104(1);
- (k) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2);
- (l) Conduct which is contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(3); and
- (m) Conduct which is contrary to Respondent's personal responsibility for the proper administration of the court in which she presides, in violation of MCR 9.205(A).

COUNT III

COMPETENCY

28. On September 9, 2003, which was scheduled as a jury trial date in *Senszyszyn*, she presided over a recorded court session where the issue of the defendant's competency was raised. The transcript is included as Exhibit A.

29. At that proceeding, the prosecutor questioned the defendant's competency as in spite of direct case authority to the contrary, he insisted on proceeding without an expert witness to testify that his passenger was disabled.¹

30. Respondent did not consider the prosecutor's argument, and instead focused on the defendant's attempt to "discuss a law that is not before the Court."
(Transcript, September 9, 2003, p. 7)

31. Respondent also made the following statements at the proceeding:

You have been trying to tell the Judge some federal statute. You have been trying to tell the Judge things that you do not have knowledge of, which are not evidence in this case.

* * *

¹ The disability was at issue as his defense was that the Americans with Disabilities Act allowed his passenger to travel in the front seat of his taxi, with the rear seat unoccupied (in contradiction to the municipal ordinance).

We do not bring in other laws that you want to have brought in for a case. There is only one law that is before this case. It's a municipal ordinance; not a federal statute. It's not a state statute. It's a municipal ordinance for the City of Detroit.

* * *

Now, when it comes today, you bring federal statutes that you want me to – the Judge to give to the jury. This is not a federal court. This is a municipal court for the City of Detroit. I can't hear federal law. You are not being charged under federal law.

(People v Senczyszyn, September 9, 2003, pp. 6-19)

32. Respondent's statements at the September 9 hearing revealed that at the time, she did not understand the prosecutor's argument.

33. Further, Respondent did not comprehend that a state district court judge has authority to consider defenses based on federal law that are asserted in response to alleged violations of municipal traffic ordinances.

34. Respondent should have such an understanding based upon her many years of experience as an attorney and as a district court judge.

35. Later in the same proceeding, Respondent inquired if the defendant was familiar with "the tale of Dickens" and proceeded to make several references

to “The Tale of Two Cities,” “David Copperfield,” and “A Christmas Carol.”
(Transcript, September 9, 2003, pp. 14-16)

36. Those statements do not relate to the issues before the court, and contribute to questions regarding Respondent’s competency.

37. The conduct described in Paragraphs 28 through 36, if true, constitutes:

- (a) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205;
- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1;
- (d) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 2A;
- (e) Conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;

- (f) Failure to respect and observe the law and to conduct oneself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;
- (g) Failure to be faithful to the law and maintain professional competence in it, contrary to the Code of Judicial Conduct, Canon 3A(1);
- (h) Failure to dispose promptly of the business of the court, contrary to the Code of Judicial Conduct, Canon 3A(5);
- (i) Non-adherence to the usual and accepted methods of doing justice, in violation of the Code of Judicial Conduct, Canon 3A(9);
- (j) Conduct which is prejudicial to the proper administration of justice, in violation of MCR 9.104(1);
- (k) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2);
- (l) Conduct which is contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(3);
- (m) Conduct which is contrary to Respondent's personal responsibility for the proper administration of the court in which she presides, in violation of MCR 9.205(A);
- (n) Physical or mental disability that prevents the performance of judicial duties, pursuant to MCR 9.205(B); and

- (n) Persistent incompetence in the performance of judicial duties, in violation of MCR 9.205(B)(1)(a).

COUNT IV

FAILURE TO MODIFY CONDUCT

38. Respondent was reprimanded in the past regarding the scope of her authority as a judge.

39. Respondent was issued an admonition on February 15, 2000, in relation to Grievance Nos. 98-11420, 98-11795, and 98-11824, which were then dismissed without prejudice.

40. In conjunction with the resolution of the grievances, Respondent agreed to refrain from the following conduct, which she had committed in the underlying cases:

- a. Threatening to increase bond or add charges in cases where Respondent must conduct a preliminary examination, because the defendant declined to waive his or her rights to a preliminary examination;
- b. Making abusive or demeaning comments regarding the appearance or physical attributes of defendants or victims who appeared before her, compelling defendants and victims to kiss, or accusing victims who appeared before her of causing the defendant to commit criminal acts;

- c. Requiring defendants to attend any religious service as a condition of probation; and
- d. Requiring parties to file joint pre-trial briefs in traffic, landlord-tenant, or criminal cases.

41. Respondent was admonished in July 2003 in relation to Grievance No. 02-14085, and the matter was dismissed without prejudice.

42. In the underlying case, Respondent failed to permit a defendant in a landlord-tenant proceeding from asserting an argument as a defense for failure to pay her rent, which is a right of a tenant.

43. Although it is not alleged that Respondent has conducted any acts barred in the prior grievances, her actions in those four matters are additional instances where she failed to understand the scope of her authority as a district court judge by imposing requirements that are not allowed under the law, or prohibiting litigants from exercising their rights.

44. In addition, the admonitions clearly instructed Respondent that she should respect the rights of individuals who appear before her.

45. The Commission's prior admonitions to Respondent regarding her actions have been ignored.

46. The conduct described in Paragraphs 38 through 45, if true, constitutes:

- (a) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30, and MCR 9.205;
- (c) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1;
- (d) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 2A;
- (e) Conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;
- (f) Failure to respect and observe the law and to conduct oneself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;

- (g) Failure to be faithful to the law and maintain professional competence in it, contrary to the Code of Judicial Conduct, Canon 3A(1);
- (h) Failure to dispose promptly of the business of the court, contrary to the Code of Judicial Conduct, Canon 3A(5);
- (i) Non-adherence to the usual and accepted methods of doing justice, in violation of the Code of Judicial Conduct, Canon 3A(9);
- (j) Conduct which is prejudicial to the proper administration of justice, in violation of MCR 9.104(1);
- (k) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2);
- (l) Conduct which is contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(3);
- (m) Conduct which is contrary to Respondent's personal responsibility for the proper administration of the court in which Respondent presides, in violation of MCR 9.205(A);
- (n) Physical or mental disability that prevents the performance of judicial duties, pursuant to MCR 9.205(B); and
- (o) Persistent incompetence in the performance of judicial duties, in violation of MCR 9.205(B)(1)(a).

Pursuant to MCR 9.209(B), Respondent is advised that an original verified answer to the foregoing complaint, and nine copies thereof, must be filed with the Commission within 14 days after service upon Respondent of the Complaint. Such answer shall be in a form similar to the answer in a civil action in a circuit court and shall contain a full and fair disclosure of all the facts and circumstances pertaining to Respondent's alleged misconduct. The willful concealment, misrepresentation, or failure to file such answer and disclosure shall be additional grounds for disciplinary action under the complaint.

JUDICIAL TENURE COMMISSION
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Dated: October 5, 2004

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